



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,334	08/26/2003	Yasuo Tamura	1614.1359	3539
21171	7590	01/09/2008		
STAAS & HALSEY LLP SUITE 700 1201 NEW YORK AVENUE, N.W. WASHINGTON, DC 20005			EXAMINER MUSSELMAN, TIMOTHY A	
			ART UNIT 3714	PAPER NUMBER
			MAIL DATE 01/09/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

11

Office Action Summary	Application No. 10/647,334	Applicant(s) TAMURA ET AL.	
	Examiner Timothy Musselman	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.1114

A request for continued examination under 37 VFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/4/2007 has been entered, and claims 1-6 and 9-11 are pending. Claims 7 and 8 have been cancelled.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 11, and 4 are rejected under 35 U.S.C. 112, 2nd paragraph for failure to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 2, 11, and 4, recite the limitations of a server asking an examinee "whether to require" the information. This is not clear, and it is difficult to extract meaning from this statement. Require for what? Examiner believes that the intention is merely to inquire whether or not the user wants the information to be sent, and that is how this limitation will be treated for this office action. Appropriate correction is required, however. Claims 2 and 11 are rejected due to their incorporation of this language from claim 1.

Claim Rejections - 35 USC § 103

The following is a quotation of the relevant portion of 35 U.S.C. 103 that forms the basis for the rejections made in this section of the office action;

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.

Claims 1-2, 4-6, and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Toshiya et al. (Japanese pub# 2001-273375) in view of Sherer et al. (US 5,875,175).

Regarding claims 1-2, 5-6, and 9-11, Toshiya discloses a system for distributing exam results which sends a user an email asking if the user wants to view exam results, and upon a user reply, sends another email to the user containing a link (network address) containing the results. See paragraphs 0001 and 0018-0020. Toshiya also discloses in paragraph 0021 that examinees are identified by examinee numbers.

Toshiya does not expressly disclose wherein the system records transmission and reception times of transmitted and received data. However, examiner takes OFFICIAL NOTICE that this has been the industry norm for email systems since the inception of such systems, and that such an inclusion would have been obvious to one of ordinary skill in the art at the time of the invention. As evidence, consider the reference to the article retrieved from a well known computer support website titled "Outlook 97 time stamp in messages inaccurate". Examination of the first paragraph (the question), illustrates that this prolific email program from 1997 utilized time-stamps for both reception and transmission. The fact that this particular reference describes

problems with the system does not negate the fact that time stamping of emails is well known in the art and in fact the industry standard.

Toshiya is silent as to the order in which the exam results are transmitted. However, Shirer discloses that it is old and well known in the art of electronic communication to transmit electronic messages based on FIFO (First In First Out). See col. 3: 1-7. Expanding this broad concept to the communication system of Toshiya would result in the exam results being transmitted based on the user's who responded the fastest (e.g. response time), because they would be the First In. It would have been obvious to one of ordinary skill in the art at the time of the invention to include this concept in the system of Toshiya, because this concept was representative of the norm for electronic communications at the time of the invention as taught by Sherer, and there are no unexpected results with the application of this concept to emailing systems such as Toshiya. Note that the transmission time would also be pre-determined, as per claim 11, depending upon the reception order.

Toshiya is also silent as to the communications being sent based on server load. However, this concept is old and well known in the art of electronic communications. For example, Sherer discloses a system and method for sending electronic communications (packets) that includes this concept. See col. 5: 10-30, wherein it is described how packets are sent in an information network according directly based on monitor load. It would have been obvious to one of ordinary skill in the art to send the communications to the examinees based on the server load, because this was consistent with the current state of electronic communications at the time of the invention, as taught by Sherer.

Regarding claim 4, toshiya/Sherer disclose all of the transmission and reception processes as described above with reference to claim 1. Sherer further discloses wherein the examinee can be

a member of a group which elects to disclose results, and wherein the results of the group are transmitted to the examinee. See paragraph 0023, and note that 'successful candidates' are a group. Also note in paragraph 0026 that the examinee can store in a profile beforehand addresses that the user wants to disclose the results to. These addresses together also form a group, and for this particular group, the examinee decides whether or not to disclose the information.

Claim 3 is rejected under 35 U.S.C. 103(a) as being anticipated by Toshiya et al. (Japanese pub# 2001-273375).

Regarding claim 3, Toshiya discloses the communication sequence leading to the transmission of the pass/fail exams as described above, and further discloses wherein the results can include the results of other examinees as well. See paragraph 0023. However, there is no teaching wherein it is the ID numbers, per se, that are transmitted. However, this limitation is not a functional distinction over Toshiya, since both systems transmit multiple and anonymous results. The precise manner in which the multiple results are displayed would merely be an arbitrary design choice that would be obvious to one of ordinary skill in the art at the time of the invention.

Response to Arguments

Applicant's arguments dated 10/22/2007 have been fully considered, but are largely moot in view of the new grounds of rejection. However, applicant argues that Toshiya does not disclose a 'collection of individuals' as per claim 4, examiner contends that the use of the term 'third person' in paragraph 0026 was meant in the form of 'third party', as in other individuals. The disclosure is that the email can be sent to third parties, and examiner has not interpreted this as being sent to *only one* third party.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy Musselman whose telephone number is (571)272-1814. The examiner can normally be reached on Mon-Thu 6:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on (571)272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



TM



Robert Pezzuto
Supervisory Primary Examiner
Art Unit 3714